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CRIMINAL APPEAL NO. 823 OF 2002

APPELLANT — Shilu Ram, S/o Chukna, aged about 32 years, Occupation- Labour R/o Village- Dhanawar, P.S. Kunkari, Distt. Jashpur

Versus

RESPONDENT — State of Chhattisgarh, Through Police Station- Manendragarh, District- Korea (C.G.)

JUDGMENT FOR CONSIDERATION

Sd/-
J U D G E
11th July, 2003

HON'BLE THE CHIEF JUSTICE

I agree.

Sd/-
Chief Justice

POST FOR JUDGMENT ON 12th July, 2003.

Sd/-
L.C. Bhadoo
Judge

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Versus

RESPONDENT — State of Chhattisgarh, Through Police Station- Manendragarh, District- Korea (C.G.)

Appellant by Smt. Preeti Budhiya, Advocate.

State by Shri Praveen Das, Panel lawyer.

J U D G M E N T

(7th July, 2003)

By Justice L. C. Bhadoo.

1. The accused/appellant Shilu Ram has preferred this appeal being aggrieved by the Judgment of conviction and sentence dated 18th June 2002 passed by the learned Second Additional Sessions Judge (Fast Track Court), Jashpurnagar in S.T.No. 76/2002 by which learned trial Court after holding the accused appellant guilty for the offence punishable under section 302 of the I.P.C. has sentenced him to undergo imprisonment for life and to pay a fine of Rs.1000/- in default of payment of fine amount to further undergo one month's simple imprisonment.

2. Briefly stated prosecution case is, that on 10th February 2002 one Jethu Ram lodged the report Ex.P/12 before Shri

S.L.Sharma, Incharge, Police Out Post – Duldula about the death of Aghni Bai as per Ex.P/13 on which the case was registered. S.L.Sharma immediately informed about the report to the Station House Officer Police Station-Kunkuri Shri P.C. Roy on telephone. Shri P.C. Roy immediately reached the scene of occurrence and after inspection of the body, prepared panchnama Ex.P/1. At the time of inspection he noticed one injury on the left side of the stomach. The Investigating Officer prepared the site map Ex.P/17. Broken bangles of the deceased were seized under Ex.P/18. The dead body was sent for postmortem examination vide Ex.P/8. Dr. Kanta Tirki (P.W.8) conducted the postmortem on the dead body of the deceased on 11th February 2002 and prepared his report Ex.P/9. Shri Sharma, Incharge, Police Outpost Duldula gave a letter Ex.P/2 to the Patwari for preparing site plan of the place of occurrence and in turn the Patwari prepared the site plan Ex.P/3. The accused/appellant was arrested on 11.2.2002 vide Ex.P/15 and after completion of the investigation challan was filed against the accused/appellant.

3. Learned Additional Sessions Judge framed the charge against the accused/appellant for the offence punishable under section 302 of the I.P.C. who denied the charge and claimed to be tried.

4. The prosecution in order to prove the offence against the accused/appellant examined in all 10 witnesses. The statement of the accused was recorded under section 313 of the Cr.P.C. In reply to most of the questions the accused

stated that he does not know anything and that he has been falsely implicated in the case and the witnesses are not speaking the truth. Learned Additional Sessions Judge after hearing the arguments of learned Public Prosecutor and counsel for the accused/appellant and after believing the evidence of the prosecution convicted and sentenced the accused appellant as mentioned above.

5. We have heard Smt. Preeti Budhia, learned counsel for the accused/appellant and Shri Praveen Das, learned Penal lawyer for the State/Respondent.

6. As far as the nature of death of the deceased Aghni Bai being homicidal is concerned Dr. Kanta Tirki (P.W.8) has stated that she conducted the postmortem on the body of the deceased Aghni Bai and she found that there was one injury on the left side of the stomach 10x8 c.m. in size and there was no other injury. Spleen of the deceased was ruptured and clotted blood was present. On account of rupture of the spleen the blood clotted and the deceased died on account of shock due to severe haemorrhage. The death was homicidal in nature.

7. As per the evidence of the doctor the deceased died on account of rupture of the spleen and the postmortem repot reveals that the spleen was enlarged. In the cross examination the doctor has stated that if the spleen is enlarged and the person falls on hard object, the spleen can be ruptured. It has also come on record that the deceased was carrying five months pregnancy. The mother-in-law Pandri Bai (P.W.2) of the deceased also stated that the

deceased had consumed wine on the fateful night. Therefore in view of the above evidence on record the prosecution has not been able to establish beyond reasonable doubt that in all probability, the deceased's death was homicidal in nature.

8. In this case almost all the witnesses have turned hostile and there is no eye witness to the incident. Jethu Ram (P.W.1) who is cousin brother of the accused has turned hostile and has stated that he does not know as to how Aghni Bai died. According to him on the fateful night Pandri Bai, the mother of the accused came to his residence and informed him about the incident. However though this witness has admitted that the accused used to consume wine. He stated that Pandri Bai informed him that Aghni Bai fell down and died. Pandri Bai (P.W.2) who is mother of the accused and mother-in-law of the deceased has stated that she is residing separately. On the fateful night her grand son Genda came and informed her about the incident. She had gone to the house of Jethu and the accused had gone to see fair in the village-Kardega. This witness has also turned hostile and in the cross examination she has stated that she was residing separately from her son Shilu. She has further stated that when she reached the house of Shilu, he ran away. She has further stated that Jethu reported the matter to the police and Shilu returned from the fair (Mela) after consuming liquor. She doesn't know what transpired between Shilu and his wife, Aghni Bai. In the cross examination she has stated that Aghni Bai also consumed liquor. Balbhadra Ram @ Badro (P.W.3) has stated that he went to the house of Shilu after death of Aghni Bai.

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Fransis (P.W.4) has turned hostile and he has not supported the prosecution case. Therefore there is no evidence in this case, from which an inference can be drawn that the accused had assaulted his wife. The only circumstance against the accused is that on the fateful night he came after consuming liquor from a fair and he was seen running away from his house by his mother. Simply on the basis of this evidence, the criminal liability of murdering his own wife cannot be fastened on the accused without any other evidence to lend support to the inference that the accused is the only person who has committed the heinous crime.

9. In view of the reasons mentioned hereinabove the judgment of conviction and sentence passed by the trial Court on the accused cannot be sustained as it is not based on any legal and convincing evidence. Virtually this is a case of no evidence.

10. In the result the appeal of the appellant is allowed. The judgment of conviction and sentence dated 18th June 2002 passed by the learned Additional Sessions Judge convicting the accused/appellant for the offence under section 302 I.P.C. is liable to be set aside and it is set-aside. The accused/appellant Shilu Ram is acquitted of the said charge. He be set at liberty forthwith if not required in any other case.

Sd/-
Chief Justice

Sd/-
L.C. Bhadoo
Judge

Thakur